

Message

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Sent: 5/24/2022 8:45:14 PM
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Subject: RE: IG Investigation Request // Gowanus

Received, thanks.

+ Rumer LeGendre, the Congresswoman's LA on the environment portfolio

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FY2023 Appropriations Requests:
https://velazquez.house.gov/appropriations_submissions

From: Linda LaViolette <linda@voiceofgowanus.org>
Sent: Monday, May 16, 2022 8:00 AM
To: Sean W. O'Donnell <ODonnell.Sean@epa.gov>
Cc: Joe Biden <President@whitehouse.gov>; Kirsten Gillibrand <kg@kirstengillibrand.com>; Velazquez, Margarita <Margarita.Velazquez@mail.house.gov>; Congressman Nadler <CongressmanNadler@mail.house.gov>; Kathleen Hochul <correspondence.office@exec.ny.gov>; Jabari Brisport <brisport@nysenate.gov>; Jo Anne Simon <simonj@nyassembly.gov>; Marcela Mitaynes <mitaynesm@nyassembly.gov>; Michael S. Regan <Regan.Michael@epa.gov>; Matthew Silverman <matthew.silverman@usdoj.gov>; Brenda Mallory <BMallory@ceq.eop.gov>; Matthew Tejada <tejada.matthew@epa.gov>; Charles Lee <lee.charles@epa.gov>; Lawrence Starfield <Starfield.Lawrence@epa.gov>; Lisa F. Garcia <garcia.lisa@epa.gov>; OIG Hotline <OIG_Hotline@epa.gov>; White House Environmental Justice Advisory Council <ejhotline@epa.gov>; Basi Seggos <basil.seggos@dec.ny.gov>; Barry Breen <Breen.Barry@epa.gov>; Radhika Fox <fox.radhika@epa.gov>; Benita Best-Wong <Best-Wong.Benita@epa.gov>; Brian Carr <Carr.Brian@epa.gov>; Michael Lynch <mike_lynch@schumer.senate.gov>; Erin Sager Vaughn <erin_sager@schumer.senate.gov>; Steve Barton <Steve_Barton@schumer.senate.gov>; Tim Ryder <tim_ryder@schumer.senate.gov>; Jess Fassler <Jess_Fassler@gillibrand.senate.gov>; Wiley, Daniel <Daniel.Wiley@mail.house.gov>; Rutkin, Amy <Amy.Rutkin@mail.house.gov>; Sara Agars <Sara.Agars@exec.ny.gov>;

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Subject: IG Investigation Request // Gowanus

By Registered Mail and Email

Mr. Sean W. O'Donnell, USEPA Inspector General
U.S. Environmental Protection Agency
Office of Inspector General
1200 Pennsylvania Avenue, NW (2410T)
Washington, DC 20460
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May 16, 2022

Given that the USEPA Inspector General is the relevant oversight official trusted to speak the truth, promote good governance, and contribute to improved human health and the environment in the United States, our group Voice of Gowanus (VoG), a coalition of long-standing community organizations in Brooklyn's Gowanus neighborhood, is contacting you to investigate extensive enforcement and compliance failures related to the Gowanus Canal and its environs.

WHY WE ARE REACHING OUT

Gowanus is an epicenter of serious, overlapping environmental issues: Superfund Listing (with an additional 33 brownfield sites surrounding the limited Canal NPL designation), an Impaired Water designation under the Clean Water Act §313, repetitious Combined Sewer Overflow (CSO) Enforcement Orders leading to a Long Term Control Plan of questionable effectiveness, failed Water Quality Standard setting and enforcement, and a Sewage Backup Administrative Order that has yet to prevent repeated raw sewage contamination in basements all across our community. All of these compounding issues make the Gowanus Canal one of the foremost nationwide examples of "a community overburdened by pollution." The inadequate, piecemeal cleanup at the improperly delineated Gowanus Canal Superfund site, along with continued CSOs, sewage backups, and permitting violations together pose a serious threat to human health and the environment. These failures require investigation to identify and prevent fraud, waste, abuse, mismanagement, and misconduct arising from this multi-decade failure to fully implement controlling federal law (the Comprehensive Environmental Response Compensation and Liability Act (CERCLA or "Superfund"), and the Clean Water Act (CWA)) in a moment when responsible parties are taking new actions that will yet again exacerbate these already harmful conditions.

At the recent meeting of the Gowanus Superfund Community Advisory Group (CAG) on April 26th, 2022, a USEPA Region 2 representative confirmed the "lack of progress in certain areas, particularly with the CSO control tanks and non-compliance [with USEPA Enforcement Orders] by the City, and intentional and willful non-compliance by the City." Region 2 also told the CAG, "Everyone knows that until the [administratively ordered sewage retention] tanks are built, even before the development happens from the rezoning, the cleanup is inadequate."

Besides leaving excessive levels of legacy toxins in the soil and groundwater of the area, these ongoing federal compliance failures spanning nearly half a century are poised to further compound the environmental injustice that has plagued the Gowanus area and its border neighborhoods since nineteenth century industrialization. As part of the massive rezoning referenced above, which more accurate estimates suggest could bring over thirty thousand new residents to the overburdened 80-block contamination zone, New York City is sponsoring development of low-income housing and a school on the most heavily contaminated areas of the former Citizen's Manufactured Gas Works. Like other gas plant sites in the area, coal tar, benzene and related toxins, and polycyclic aromatic hydrocarbons remain in the soil

and groundwater under and near the sites at levels well above the legal objectives for soil cleanup goals and groundwater quality standards. Another former gas works parcel—still not remedied in spite of New York’s knowledge of gas plant contamination and danger since at least 1979—houses a public pool critical to the welfare and recreation of the public housing residents in our neighborhood. As raw sewage discharges persist, sea level rise and storm surge risks further compromise the Canal’s ability to manage flooding in the FEMA Zone A. This has led to the entire area being identified as a Disadvantaged Community by the Climate Justice Working Group (CJWG) as part of New York State efforts to combat climate injustice.

In addition to the statutory issues affecting the Gowanus, attempts by USEPA officials to fully apprise the affected community regarding inadequate response actions and secure all legally required response actions from the Potentially Responsible Parties have been met with public condemnation and potentially inappropriate personnel actions by regulatory officials charged with full transparency. Staff of the NYSDEC have publicly admonished USEPA personnel in public correspondence for describing shortcomings of proposed remedial actions, and New York City officials have claimed unavailable privileges to shield incorrect assertions regarding stormwater management requirements under the State Pollution Discharge Elimination permits (SPDES) and the Superfund remedy. Adverse personnel actions appear to be ongoing.

Only investigation, truth, and good governance will prevent thousands of vulnerable current and prospective Gowanus residents from environmental threats and exposure that federal laws were specifically enacted to prevent. USEPA leadership must investigate the blatant disregard of discharge, backup, and restoration requirements by New York City and other responsible parties that have plagued the Gowanus for half a century, leaving it with permanent coal tar repositories, toxins, and storm, sea, and sewage waters flooding from without and within.

OUR REQUEST TO YOU

VoG hereby requests that you and your office immediately open an investigation into the failures of due process, enforcement and compliance assurance, as well as remedial response described herein affecting the Gowanus Canal and its surrounding neighborhoods and ecosystem. This investigation is imperative given New York City, a major cleanup responsible party, is also openly defying USEPA orders for sewer backup elimination, sewer retention tank construction, and SPDES provisions, while actively permitting redevelopment activity that will expose more vulnerable families, workers, and business owners to pollution and climate damage.

Specifically, VoG requests investigation into the following programmatic failures by New York City and other responsible parties to comply with federal law (including delegated authorities), and programmatic failures of Federal and State regulators in Region 2 to enforce federal law (including delegated authorities):

A. CERCLA/Superfund

1. Failure to include all parcels of three Manufactured Gas Works sites (Citizens, Fulton, Metropolitan), as well as multiple industrial and commercial source parcels bordering the Gowanus Canal, as Subsites and/or Operable Units of the Canal NPL Listing in 2010.
 - This includes the failure to enforce institutional controls at these parcels that limited restricted residential uses, and the seemingly arbitrary application of such institutional controls at the various parcels subject to similar levels of contaminated soil and groundwater.
2. Failure to apply CERCLA statutory, regulatory, and process requirements (including Applicable, Relevant, and Appropriate Requirements or ARARs) to cleanup of affected soils and the massive combined plume contaminating the Canal’s interconnected groundwater system, especially for parcels that will be rezoned for residential use.
3. Improper inclusion of ineligible Superfund Subsites and Operable Unit parcels and groundwater in the New York State Brownfield Program.
4. Failure to enforce multiple Superfund Administrative Orders, including injunctive and other relief.
5. Improper substitution of developer entities for Responsible Parties to pay for and execute necessary cleanup actions.

B. Environmental Justice

1. Failure to meet requirements of Executive Order 14008 requiring the Administrator of the Environmental Protection Agency to strengthen enforcement of environmental violations with disproportionate impact on underserved communities through the Office of Enforcement and Compliance Assurance.
2. Failure to execute the April 7, 2021 directive of Administrator Michael Regan on *Commitment to Environmental Justice* to strengthen enforcement of environmental statutes and civil rights laws in communities overburdened by pollution.
3. Failure to execute the April 26, 2021 directive from Lawrence E. Starfield, Acting Assistant Administrator to advance these Presidential and Administrator environmental justice (EJ) goals noted above that included, inter alia, a requirement to:
 - Prevent further pollution due to noncompliance, mitigate past impacts from pollution, and seek penalties for violations that impact overburdened communities;
 - Obtain injunctive relief that remediates the pollution and addresses past harms to communities; and
 - Enforce cleanup at all subsites and operable units of a fully and accurately designated Gowanus Canal Superfund Site.
4. Failure of Region 2 to participate in the Environmental Impact Review Process as a Cooperating and/or Involved Agency under the applicable requirements of both the National Environmental Policy Act and the NY State Environmental Quality Review Act, in accordance with requirements of EO 14008 to ensure that all federal agencies develop programs, policies, and activities to address the disproportionately high and adverse health, environmental, economic, climate, and other cumulative impacts on communities that are marginalized, underserved, and overburdened by pollution (no cumulative impact analysis was included in the Gowanus Rezoning FEIS, nor did Region 2 note this failure in its limited comments intended to substitute for required participation).
5. Failure to address cumulative additions of gas-burning residences and businesses likely to interfere with environmental justice actions to curtail fossil fuel consumption, including pipelines and electricity generation facilities operating in, or being added to, stressed communities.
6. Failure to act when New York City elected officials and bureaucrats, laboring under cleanup and compliance conflicts of interest, publicly promised already mandated compliance requirements, such as sewer backup clearances and CSO control, as potentially fraudulent inducements to overburdened communities to accept development that actually adds to their contamination burden (see unsigned, unexecuted, unenforceable Points of Agreement Memo purporting to “provide” multiple infrastructure recapitalization projects already required by law as consideration for NYCHA and other residents agreeing to rezoned development).

C. Clean Water Act

1. Failure to enforce CWA provisions requiring Water Quality Standards promulgation by New York State under delegated authorities to meet federal designated use mandates for fishable/swimmable waters.
2. Failure to enforce CSO control requirements under SPDES permits issued to Owl’s Head (NY 0026166) and Red Hook (NY 0027073) WRRFs for *Separate Storm Sewers* and *Sewer Connection Prohibitions* (paragraphs 9 and 10 respectively), including the failure to deny claims made by New York City that combined sewer system connections by additive Gowanus development constitute “Best Management Practices” under the SPDES.
3. Failure to enforce post-construction compliance monitoring to demonstrate attainment of water quality standards under the Gowanus Long Term Control Plan by New York State or New York City under the 2001 USEPA Guidance: Coordinating CSO Long-Term Planning with Water Quality Standards Reviews using either the “presumptive” or “demonstration” approach.
4. Failure to enforce a Total Maximum Daily Load (TMDL) for the Gowanus Canal in light of ongoing CSO control failure, continued listing of the Canal as an Impaired Water under CWA §303, and failure to construct the CSO retention tanks remedy under the CERCLA Administrative Order.
5. Failure to adequately and effectively enforce the 2016 Sewer Backup Administrative Compliance Order (No. CWA-02-2016-3012) to New York City for violations of CWA Section 301 for failed operation and maintenance of its sewage Collection System. Sewer backup complaints have not been appreciably reduced since the Order was issued in 2016.

D. Subversion and Retaliation

1. Inappropriate curtailment of National Grid cleanup requirements at manufactured gas works sites to otherwise reduce rate base charges and potentially mislead shareholders regarding National Grid's full cleanup liability (see Attachment B).
2. Leveraging of developer funding to complete cleanups meeting ARAR-compliant cleanup objectives in potentially improper substitution of New York City, National Grid, and other PRPs.
3. Retaliatory personnel actions against USEPA staff for sharing accurate information with the public.
4. Failure to apply injunctive and other enforcement relief in the face of ongoing bad-faith negotiations, if not outright compliance defiance by Responsible Parties/Permittees.

In addition to the document links included above, VoG has attached additional materials supporting this Investigation Request, and further incorporates by reference the formal VoG Comments submitted on the Final and Draft Environmental Impact Statement prepared for the Gowanus Neighborhood Rezoning.

It is the stated policy of the Biden Administration to organize and deploy the full capacity of its agencies to combat the climate crisis by implementing a Government-wide approach that: reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; delivers environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure. The total reverse of these objectives will occur under the massive, unpermitted 80-block rezoning demanding major fossil energy use being implemented in a FEMA Flood Zone A surrounding an Impaired Water also designated a Superfund Site subject to continuous coal tar, toxin, and sewage discharges in contravention of law.

VoG further hopes this IG investigation can address or include recommendations for all upland contamination source sites to be designated Subsites or Operable Units in the Gowanus Superfund NPL listing (or apply requirements CERLCA under the Superfund Alternative Program), for necessary compliance and enforcement assurance, and the need for a Supplemental Environmental Impact Statement before redevelopment that further impedes compliance can occur.

It would also be of assistance to the community if the investigation assessed the status of continued releases of pollutants from Gowanus Canal upland parcels as ongoing violations of the Rivers and Harbors Act, given the failure to include the upland parcels in the Superfund designation precludes application of the various superseding jurisdictional, permitting, and enforcement provisions only granted under Superfund.

VoG thanks you in advance for your attention to these enforcement failures that compound growing climate threats and are simply unsustainable for an unduly burdened community suffering under a century of historic environmental damage and injustice.

Sincerely yours,

Linda LaViolette & Jack Riccobono
Co-Chairs, Outreach Committee
Voice of Gowanus
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CC:

The Honorable Joseph R. Biden Jr.
The Honorable Chuck Schumer
The Honorable Kirsten Gillibrand
The Honorable Nydia Velázquez
The Honorable Jerrold Nadler

The Honorable Kathy Hochul
The Honorable Jabari Brisport
The Honorable Jo Anne Simon
The Honorable Marcela Mitaynes
Administrator Michael Regan, EPA
Matthew Silverman, Assistant U.S. Attorney, Chief of Environmental Litigation, Eastern District, DOJ
Brenda Mallory, Chair, Council on Environmental Quality, Executive Office of the President
Matthew Tejada, Director, Office of Environmental Justice, EPA
Charles Lee, Senior Policy Advisor, Office of Environmental Justice, EPA
Lawrence Starfield, Acting Assistant Administrator, Office of Enforcement and Compliance Assurance, EPA
Administrator Lisa Garcia, EPA Region 2
OIG Hotline

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